
United States Circuit Court
of Appeals

FOR THE NINTH CIRCUIT

STEAMSHIP "COLUMBIA,"
Etc., and JAMES BARRON,
Owner,

Appellants,

vs.

ALEX ZUEGHOER, K. J. JO-
HANNSON and JULIUS JO-
HANNSON,

Appellees.

No. 2058

BRIEF OF APPELLEES

Upon Appeal from the United States District Court
for the Western District of Washington,
Northern Division.

MILLION & HOUSER,
GEO. FRIEND,

Proctors for Appellees.

Seattle.

Rust-Murphy Company, Seattle

FILED

MAY - 2 1910

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We submit that not only have appellants failed to give any sound or valid reason why the decree should be reserved but that upon their own statement. We are entitled to have it affirmed.

We know of no law, rule or reason why appellees should be deprived of a lien because they were stockholders in the corporation that hired them and operated the steamer.

We contend that as this appeal results in a trial *de novo*, the evidence shows that the Trial Court erred in allowing claimant a credit of one hundred dollars.

On page 26 of record is to be found the testimony of claimant, who says the libellant K. J. Johannson offered to contribute about \$100 to repairs.

Again, on page 27, the claimant says: "\$100, I *think* he said, which I guess was about all that he claimed."

Also that it was all conditioned on the boat being kept on the run.

Libellant Johannson testified as follows concerning the application of back wages to repairs:

"Well, I told Barron if he would keep the Columbia on the run I would give that much out of the back standing wages towards her repairs, if he wanted to keep the Columbia on the run during the *winter*, otherwise I wanted my money, and there was no more said about it" (Record, page 31).

The boat was on the run after claimant took it

over in July for a period of three months, which would mean about the last of October.

Now, here is the waivering, uncertain statements of Barron as to the terms and conditions of the applying the back wages to repairs as against the plain and explicit statement of libellant that such application was to be made if the boat was kept on the run all winter.

The burden of proof was on claimant, and we submit that he failed by a fair preponderance of the testimony to show that the wages were to be unconditionally applied to repairs.

We respectfully submit that thus not only should the decree be affirmed, but that as to the \$100 it should be modified by allowing such amount.

MILLION & HOUSER,
GEO. FRIEND,

Proctors for Libellants.

Seattle.

